

**ENTERED**

March 14, 2023

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**GREGORY BERRY, JR.,  
(Inmate # P00184337)

Petitioner,

vs.

SHERIFF OF FORT BEND COUNTY,

Respondent.

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CIVIL ACTION NO. H-23-338

**MEMORANDUM OPINION DISMISSING CASE**

The petitioner, Gregory Berry, Jr., (Inmate # P00184337), is a pretrial detainee in the Fort Bend County Jail. Representing himself, he filed a petition for writ of habeas corpus under 28 U.S.C. § 2241 against the Sheriff of Fort Bend County, (Docket Entry No. 1), apparently challenging his continued pretrial detention on a charge of aggravated assault with a deadly weapon. The petition appears to be incomplete, it contains no substantive allegations of any kind, and it does not identify the relief that Berry is seeking. (*Id.*). The court ordered Berry to file an amended petition using the approved form for habeas petitions from state pretrial detainees. (Docket Entry No. 3). The court also notified Berry that he must either pay the \$5.00 filing fee for a habeas corpus proceeding or file a properly supported motion to proceed without prepaying the filing fee. (*Id.*). The court provided Berry with the appropriate forms and warned him that failure to timely comply with the court's order could result in dismissal of his action without further notice under Federal Rule of Civil Procedure 41(b).

To date, Berry has not filed an amended petition as ordered, and he has neither paid the filing fee nor filed a motion for leave to proceed without prepaying the filing fee. His time to do so under the court's order has expired. Berry's failure to pursue this action forces the court to

conclude that he lacks due diligence. Dismissal for want of prosecution is appropriate. *See* FED. R. CIV. P. 41(b); *Larson v. Scott*, 157 F.3d 1030, 1031 (5th Cir. 1998) (a district court may dismiss an action on its own for failure to prosecute or to comply with any court order).

Berry is advised that he may seek relief from this order under Federal Rule of Civil Procedure 60(b) if he can show good cause for failing to comply with the court's order and the local rules. Any motion under Rule 60(b) must be accompanied by an amended petition on the proper form and either the filing fee of \$5.00 or a properly supported motion to proceed without prepaying the filing fee, including a certified copy of his inmate trust fund account statement.

Berry's petition, (Docket Entry No. 1), is dismissed without prejudice for want of prosecution.

SIGNED on March 13, 2023, at Houston, Texas.

A handwritten signature in black ink, reading "Lee H. Rosenthal". The signature is fluid and cursive, with a large, sweeping loop at the end of the last name.

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Lee H. Rosenthal  
United States District Judge